IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

ARBITRATION APPEAL NO. 21 OF 2007

M/s. Karia Hotels Pvt. Ltd. ... Appellant.

V/s.

M/s. Zenith Metaplast Pvt.Ltd. ... Respondent.

Mr. Vikas B. Tapkir for the Appellant.
Mr. Mohan Pongliya for the Respondent.

CORAM : DR. D.Y. CHANDRACHUD,J.

27TH JULY 2007.

P.C. :-

. This appeal before the Court arises on an application under Section 9 of the Arbitration and Conciliation Act, 1996. A franchise agreement was entered into between the parties on 1st April 2006. In the agreement it was contemplated that the Respondent would pay to the Appellant a minimum monthly guaranteed commission of 10% of the gross sales or Rs.1,20,000/- per month whichever was higher for an initial period of 12 months and to be increased at the rate of 10% per annum thereafter. Interest on a fixed deposit of Rs.25 lakhs was to be paid. The duration of the agreement was to be for 15 years commencing from 1st April 2006. The agreement contemplated a minimum lock-in-period of

3 years in clause 19. The agreement contained an arbitration clause.

2. In the application under Section 9, the Respondent sought a direction to the Appellant to obtain a renewal of : (i) The Excise Liquor Licence FL-III; (ii) The Health Department Licence; (iii) The Food/Hotel Licence and (iv) The Police Licence. The application was allowed by the District Judge by the impugned order dated 21st May 2007.

3. On behalf of the Appellant it has been urged that there was a delay on the part of the Respondent in paying the minimum guaranteed commission of Rs.1.20 lakhs per month. Moreover, it was urged that in a recording letter dated 31st March 2007, the Appellant had noted that it was the Respondent who had applied for termination of the licence. The District Judge in the course of the order on the application under Section 9 has observed that as a matter of fact the entire commission computed at Rs.1.20 lakhs per month has been paid though there may have been a marginal delay of a few days. However, that was not objected to by the Appellant and the payments were all encashed.

4. Counsel appearing on behalf of the Appellant fairly does not dispute before this Court that the

entire commission computed at Rs.1.20 lakhs per month has been received until date and that the Respondent has also paid the security deposit of Rs.25 lakhs as envisaged in the agreement.

5. The agreement contemplated in clause 18 a notice of termination upon a default in the payment of the outstandings for a period of three consecutive months. The case of the Appellant is that the representative of the Respondent has orally informed the Appellant that the agreement was to be terminated, upon which, the Appellant addressed a letter dated 31st March 2007. The Respondent has disputed receipt of the letter dated 31st March 2007. But, that apart, as noted by the District Judge, the theory that there was an oral termination is belied upon by the circumstance that even thereafter on 9th May 2007, a payment of Rs.1.32 lakhs was made by the Respondent and accepted by the Appellant. In fact, as noted earlier, the payments have been made subsequently.

6. The Appellant has received valuable consideration in pursuance of the agreement of franchise consisting inter-alia of the security deposit of Rs.25 lakhs and the minimum guaranteed amount of Rs.1.20 lakhs per month. By Clause 8 of the terms of the agreement it has been stipulated that the Appellant has to obtain

and renew all licences, permissions, etc. at his own cost subject to being reimbursed by the Respondent. The preamble of the agreement contains a recital that the Appellant should give valid and requisite permissions including an Excise Liquor Licence, Food Licence and Police Licence. The order passed by the District Judge requiring the Appellant to apply for a renewal of the licences therefore cannot be faulted. However, it would be necessary to also direct that upon the Appellant obtaining the renewal of the licences as directed, the Respondent shall re-imburse the Appellant of all the costs, charges and expenses incurred in connection therewith. It is also clarified that the present order shall not be construed as any direction to the competent authorities, and any application for renewal will be processed in accordance with law.

7. On the request of Counsel appearing on behalf of the Appellant who urged that a time schedule be prescribed by this Court, there shall be a direction to the effect that the Appellant shall apply within a period of four weeks from today and duly ensure that all necessary formalities are complied with in pursuance of the obligations of the Appellant in clause 8 of the agreement. The appeal is accordingly disposed of.